

- (1) Whether claimant's accidental injury arose out of and in the course of his employment with respondent.
- (2) Whether claimant provided notice of accident to respondent within 10 days or whether claimant showed just cause for not providing such notice.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issues raised by respondent grant the Appeals Board jurisdiction to review a preliminary hearing order. See K.S.A. 44-534a, as amended.

(1) Claimant alleges he injured his right leg while working for respondent on May 27, 1997. Claimant was driving a tractor and spraying a cultivated corn field on the day of the alleged accident. After several hours of spraying, claimant stepped off the tractor and felt something snap in his right leg as he was walking across the unleveled, cultivated field. Claimant testified he told Lynn Chaffin, his supervisor, on the day of the incident, that his leg snapped and subsequently started to swell. Greg Ebert, managing partner for respondent, was normally claimant's supervisor but was absent the day of claimant's accident. Claimant testified that Mr. Ebert was on vacation at the time of the accident and as soon as he returned claimant indicated he told Mr. Ebert about his injured right leg.

Claimant sought medical treatment on his own with Alan P. Newman, M.D., of Great Bend, Kansas, on June 13, 1996. Dr. Newman's medical notes were admitted into evidence at the preliminary hearing. The medical notes did not relate a history that claimant's right leg injury occurred while he was walking at work. Claimant did give a history to Dr. Newman that he sustained a fibular fracture of his right leg some 14 years ago and the leg had been asymptomatic until now. The doctor diagnosed a torn fibrous union of the two fractured ends of fibula. Claimant was managed conservatively with medication. Claimant was able to continue working but had pain and swelling of the right leg. The medical notes indicate that Dr. Newman last examined the claimant on March 20, 1997. At that time, the doctor opined that claimant might need surgery to correct his continuing right leg problem. Claimant was able to continue to work for respondent until he voluntarily quit on February 15, 1997.

Both claimant and Mr. Ebert, who also testified at the preliminary hearing, established that they did not know that an aggravation of a preexisting condition was a compensable injury under the Workers Compensation Act. Therefore, claimant first submitted his claim for medical treatment under a private insurance policy with Blue Cross and Blue Shield. Claimant testified he later contacted the Division of Workers Compensation and found that an aggravation of a preexisting condition was a compensable injury. Claimant then submitted his claim to respondent's insurance carrier, who denied the claim based on a preexisting condition.

Respondent acknowledges that claimant does have a right leg injury but claims the injury occurred somewhere but not while he was working. Respondent contends since claimant failed to give Dr. Newman a history that he injured his leg at work and further

since he submitted a claim for medical treatment with Blue Cross and Blue Shield, the injury is not work connected.

The Administrative Law Judge found that claimant's right leg injury was work related. The Appeals Board affirms that finding. The Appeals Board concludes that claimant's testimony is uncontradicted that he injured his right leg as he was walking across the unleveled, cultivated field while he was at work for respondent on May 27, 1997.

(2) The Administrative Law Judge also found that claimant failed to give notice of accident to respondent within 10 days but claimant established "just cause" for failure to give the 10 day notice. See K.S.A. 44-520. The Appeals Board finds claimant complied with the notice requirement as set forth in K.S.A. 44-520, as the Appeals Board concludes claimant gave respondent notice of accident within 10 days. The Appeals Board finds that claimant and Mr. Ebert established that when Mr. Ebert was absent Mr. Chaffin was designated as the supervisor for respondent. Claimant testified that on the day he injured his right leg he told Mr. Chaffin of the injury. Mr. Ebert testified that he was not at work on the Memorial Day weekend because he had to fly out of Kansas City, Missouri, for vacation on the Monday that was the Memorial Day holiday in 1996. Therefore, since claimant established that his accident occurred on May 27, 1996, and Mr. Ebert was not present, notice to respondent was made by claimant telling Mr. Chaffin that he hurt his right leg at work.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order entered Administrative Law Judge Kenneth S. Johnson contained in the preliminary hearing transcript dated May 7, 1997, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1997.

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BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS.  
Richard A. Boeckman, Great Bend, KS.  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director